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EXAMINER

HEWITT II, CALVIN L

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/714,702
Filing Date: November 16, 2000
Appellant(s): BLY ET AL.

MAILED

SEP 08 2004

GROUP 3600

Michael B. Stewart Reg. No. 36,018, Charles A. Bieneman, Reg. No. 51,472
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01 July 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, 8, 18 and 21-25, claim 2, claim 3, claim 4, claim 9, claim 10, claim 11, claim 16, claim 17, claims 5 and 6, claim 7, claims 12 and 20, claims 13 and 14, claim 15, and claim 19 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,875,430	KOETHER	2-1999
5,900,801	HEAGLE et al.	5-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Response to Arguments

The Applicant is of the opinion that the prior art of Koether do not recite, "generating a preventative maintenance determination". The Examiner respectfully disagrees. Koether specifically recite,

Normally, monitoring and tracking control passes to the control center after a malfunction or fault has been reported by the microprocessor based controller. However, the control center may effect preventative maintenance even when there is no malfunction reported. Scheduled preventative maintenances are stored in databases 190. (column 8, lines 30-39)

Regarding the order in which information is processed, Koether disclose preventative maintenance (column 8, lines 30-39; column 9, lines 60-65) and the use of artificial intelligence (e.g. fuzzy logic) to solve problems. To one of ordinary skill in the art of artificial intelligence, expert systems, fuzzy logic programming and the like are computer-based tools that attempt to simulate human thought processes by creating a foundational base of information with which to analyze problems in the areas of finance, war and medicine, for example. Hence, it would have been obvious to one of ordinary skill, looking at the teachings of Koether to solve maintenance related problems using AI,

fuzzy logic, knowledge bases, expert systems, etc. by first creating a knowledge base and inference engine (foundational data) and then apply them to solve a current or future problem (acquired data) (Microsoft Press Computer Dictionary Third Ed., pages 31, 184, 213).

Claim 25 recites, "historical characteristic and said remote historical characteristic are not dates on which maintenance were performed". Rereading claim 23, the "data" of claim 25 is functional as it used to determine preventative maintenance. Nonetheless, Koether [non-exhaustive] list of historical characteristic data from which a determination of whether or not preventative maintenance should be performed is based (column 9, lines 10-45). Therefore, it would have been obvious to one of ordinary skill to select from any, or all of the list, or in general to choose whatever data a AI, expert, or fuzzy logic system when need in order to properly analyze a given problem (column 9, lines 52-67).

Hence, the rejection is maintained.

Claim Rejections - 35 USC § 102

4. Claims 1-4, 8-11, 16-18 and 21-24 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Koether, U.S. Patent No. 5,875,430.

As per claims 1-4, 8-11, 16-18 and 21-24, Koether disclose a system for gathering and analyzing data relating to a movable asset comprising:

- a local controller at a first location for acquiring data that is representative of at least one operating characteristic of an asset (figure 2; column 4, lines 23-67; column 5, lines 60-67; column 8, lines 47-56)
- an analysis controller (e.g. remote database) located at a second location that is responsive to the acquired data from the local controller (or local controllers over a plurality of locations) for generating an analysis of the acquired data (column 4, lines 13-36; column/line 4/60-5/36; column 5, lines 50-59; column/line 5/65-6/9; column 6, lines 33-46; column 9, lines 44-67)
- an analysis controller that provides for generating a preventative maintenance determination from said acquired data and at least one historical characteristic (e.g. maintenance history) relating to said asset (column 9, lines 44-67)
- an electronic communication network for transmitting data from the local controller to the analysis controller (figures 1-3; column 4, lines 12-22; column 5, lines 36-49)
- a handheld device receiving at least a subset of said acquired data stored in the analysis controller (figure 8; column/line 10/1-11/29)
- a handheld device in direct contact with the analysis controller (figure 8; column/line 10/1-11/29)

- a second computer system that receives acquired data, selectively modifies the acquired data and forwards the modified acquired data to the handheld device (figure 8; column 9, lines 10-56; column/line 10/1-11/46)
- an analysis controller with a database including data values, collected data and comparison data; where the comparison represents a best practice level or past historical data to provide a basis for comparison (column/line 10/1-11/46)
- a handheld device that receives parts data in the form of inventory (column 11, lines 6-14 and 35-46)
- an analysis controller that includes a database including data values, collected data and comparison data (e.g. best practice level and historical data to provide a base point for comparison with collected data) available for a selected data value (column 9, lines 7-60; column 11, lines 24-46)
- user data representing a user accessing the asset, user identification (column 9, lines 10-56; column 10, lines 36-44; column/line 12/27-14/7)
- a second local controller located at a third location for acquiring operating characteristic data (e.g. from the same asset category of

a remote asset) (figure 2; column/line 1/57-2/8; column 2, lines 23-37; column 4, lines 13-36; column/line 4/60-5/36)

Claim Rejections - 35 USC § 103

Claims 5-7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koether, U.S. Patent No. 5,875,430.

As per claims 5-7, Koether teaches a handheld device that provides data values for entry of foundational data (Specification, page 32, lines 4-7) associated with data values and transmitting the data to the analysis controller (column 11, lines 15-29). Koether also teaches an analysis controller with a database that stores historical data for comparison with collected data (column/line 10/1-11/46). Koether doesn't explicitly recite receiving foundational data prior to acquired data. However, it would have been obvious to one of ordinary skill to collect foundational data prior to acquired data, if there were similar repairs, or installation problems at another location, which can be used to resolve the situation at the current site. The hand-held device of the Koether system contains forms (column/line 10/62-11/8). But, Koether doesn't explicitly recite forms used to collect foundational data. Nonetheless, forms are a well known processing tool used for presenting and/or receiving data in a structured

manner. Therefore, it would have been obvious to one of ordinary skill to utilize forms for querying the maintenance database (column 11, lines 24-29).

As per claim 25, Koether specifically recite the system collecting data such as last repair date, cooking profiles, ...etc. However, the specific data identified by Koether (column 9, lines 10-45) is not necessary and sufficient for implementing their system as Koether explicitly recite "may include" referring to the type of data being collected. Therefore, it would have been obvious to one of ordinary skill to collect whatever data necessary in order to provide an accurate analysis of the monitored appliances.

Claims 12-15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koether, U.S. Patent No. 5,875,430 in view of Heagle et al. U.S. 5,900,801 and Mabuchi et al., U.S. Patent No. 6,417,760.

As per claims 12-15, 19 and 20, Koether teaches a system for maintaining food service facility (abstract; figure 3). However, Koether does not explicitly recite user training. Heagle et al. teach a system for monitoring conditions at a food service establishment, utilizing a local or analysis controller (figure 1) comprising: user identification and access authorization that includes an analysis of user training (column 6, lines 38-62; column 7, lines 36-48; column/line 7/59-8/67; column 9, lines 23-26; column/line 11/63-12/2; column 12, lines 39-67;

column 14, lines 20-22; column 16, lines 11-39). However, neither Heagle et al. nor Koether explicitly recite receiving user ID data, transmitting the ID data to a remote database to derive access to equipment. Mabuchi et al. teach a maintenance and inspection system that maintains worker files, including identification, authorization and certification data, in order to determine whether a worker is allowed to operate equipment (figures 6, 8, 19, 23-26, and 40; column, 18, lines 1-6; column 21, lines 20-53; column 30, lines 47-64; column 33, lines 14-39; column 38, lines 33-46) Therefore, it would have been obvious to one of ordinary skill to combine the systems of Koether, Heagle et al., and Mabuchi et al. in order to maintain a clean and efficiently operating environment where food is prepared and/or distributed, through the implementation of employee specific requirements for ensuring adherence to operational standards, such as HAACP guidelines ('801, column 8, lines 30-67; column/line 12/24-13/20; column 16, lines 11-40).

(11) Response to Argument

Initially, to support the Appellant's rationale for the claims being in condition for allowance, the Appellant asserts that the Examiner's rejection did not teach or suggest all of the claimed features. Further, the Appellant suggests that, since the Examiner did not reject each claim, the Examiner must have applied a secret Official Notice to teach

the “missed” limitations. However, a careful reading of the Examiner's rejection (above) does not support the Appellant's argument, as the Examiner did not take Official Notice.

Group A

Group A comprises claims 1, 8, 18 and 21-25. The broadest claim being claim 1, therefore, the patentability of group A stands and falls with claim 1.

Koether teaches three types of preventative maintenance. Koether discloses scheduled preventative maintenance and preventative maintenance requested by an appliance ('430, column 8, lines 30-38). Koether also teaches preventative maintenance determined by diagnostic information transmitted to a control center ('430, column 9, lines 60-63). Specifically, Koether teaches a control center computer ('430, figures 1 and 3) receiving diagnostic data (i.e. acquired data) ('430, column 9, lines 5-60) from local controller ('430, figures 1-3 and 8) and storing this acquired data in a control center computer database ('430, figures 1 and 3) along with previously stored acquired data (i.e. at least one historical characteristic) ('430, column 9, lines 6-45). The control center computer then “based on information transmitted to control center [170], a repair person may be dispatched to the site of the kitchen appliance requiring service or preventative maintenance” ('430, column 9, lines 60-63). Therefore, Koether teaches generating a preventative maintenance determination from said acquired data and at least one historical characteristic relating to said asset”. Regarding analyzing acquired data to make “a determination of a preventative maintenance schedule from a collected

maintenance history...”, Koether teaches “based on information transmitted to control center [170], a repair person may be dispatched to the site of the kitchen appliance requiring service or preventative maintenance” (‘430, column 9, lines 60-63). Amongst the diagnostic information transmitted to the control center is the “type of malfunction” (‘430, column 8, lines 27-30; column 9, lines 20-30). “Type of malfunction” is representative of the claimed “maintenance history” as described in the “battery” example (Appellant’s Specification, page 17, lines 14-21). Note, however, the Appellant’s Disclosure is absent the term “maintenance history”. Therefore, a database that retains data such as the reason why maintenance personnel was sent out or the source of the problem (i.e. type of malfunction), maintains “maintenance history”.

Group B

Claim 2 recites, “wherein said hand held device is in direct contact with said analysis controller”. Again the Examiner would like to point out that the Appellant’s Disclosure is absent a definition for “direct contact” (Specification, figure 8; page 26, lines 6-30) therefore, a reasonable interpretation of “direct contact” is communication between without the assistance of a “third party” or entity, or “middle man”. The Appellant’s rationale for why Koether is insufficient prior art is faulty and shows a ***total*** lack of understanding of how wireless, or even telecommunications works. Routers, switches, base stations and the like are the technologies, which allow a call, query and

the like to be sent over a network. Does the Appellant think calls are made using two cans and a string? Notice how the Appellant attempts to misconstrue the clear teachings of the prior art by alleging that the hand-held device of the repair personnel ('430, figure 8) receives instructions from a kitchen base station ('430, figure 8).

Koether, on the other hand, explicitly states that service personnel contacts the control center computer ('430, figure 8) in order to receive a sub-set of acquired data such as "maintenance history" or "prior repairs or malfunctions ('430, column 11, lines 30-46).

Groups C and D

The control center computer ('430, figures 1 and 3; column 6, lines 33-60) of Koether comprises multiple "computer systems". A first system or analysis controller, for example, receives operating characteristics of an appliance and makes a preventative maintenance determination ('430, column 8, lines 39-56; column 9, lines 5-67). A second system accesses the received operating characteristic data (e.g. failures and malfunctions including appliance identification information- '430, column 8, lines 20-30) and transmits it along with selectively modified aspects of the acquired data (e.g. a sum of prior repairs or malfunctions) ('430, column 8, lines 20-30). The Appellant's Disclosure does not explicitly define "selectively modifying aspects of acquired data". The Disclosure merely refers a second computer system that transfers "data" and "recommendations" to a hand held device (Specification, page 36, lines 9-11). This is

also taught by Koether as service personnel can obtain stored acquired data ('430, column 11, lines 30-47) along with "recommendation" data such as repair instructions ('430, column 11, lines 23-30). Regarding the location of the second computer system, since the "acquired data" from the first system and transmits said data along with modified aspects of the data to the service personnel hand-held, it is disposed "between" the hand-held and the first.

Groups E and I

Koether teaches an analysis controller ('430, figures 1 and 3) that stores comparison data for a selected data value ('430, column 9, lines 5-45; column 11, lines 23-30). Specifically, Koether stores repair instructions or a "best practice level" and provides said instructions to a service personnel to allow said personnel to repair an appliance by comparing the instructions with the appliance being serviced ('430, column 11, lines 23-30). Koether also compares collected data and historical data to determine the frequency and type of failures for specific appliances ('30, column 9, lines 55-60) and uses artificial intelligence or fuzzy logic to compare collected data and historical data ('430, column 9, lines 5-45) to determine cooking profile modifications ('430, column 9, lines 45-56).

Group F

Koether teaches monitoring kitchen appliances in use ('430, column 3, lines 50-65; column 4, lines 60-67; column 8, lines 14-30; column/line 8/57-9/3; column 9, lines 5-45; column 11, lines 53-61). Therefore, Koether teaches collecting data that represents a user (e.g. Burger King or McDonald's- '430, column 11, lines 53-61) accessing an asset.

Group G

Koether teaches an analysis controller ('430, figures 1 and 3) that stores user identification such as a customer name, ID, account and number ('430, column 10, lines 35-45). In order to read on claim 11, the prior art need only show user data that is user identification or access authorization. Why? Because, claim 11 only requires user data to be a subset of the set of {user identification, access authorization}, such as the set {user identification} of user identification, the set {access authorization} of access authorization, or the null set {}.

Group H and J

Group J comprises claims 5 and 6. Claim 5 is the broadest claim in the group. Therefore, the patentability of group J stands and falls with claim 5.

Regarding "forms", the Examiner erred and should have rejected claim 5 under 102(e). Claims 5 and 16 merely recite providing "forms providing data values" for the

entering of foundational data associated with said “data values”. A reasonable interpretation of “data value”, therefore, is a text field or some other data structure or GUI component that allows a user to input data (Note, because text fields and the like are graphical in nature therefore they **are** defined in code by X-Y coordinates and/or values that determine their size, shape and position on a computer screen). Koether teaches service personnel preparing an invoice utilizing hand-held devices that comprise **standard billing** and **invoice formatting** stored in memory (‘430, column/line 10/62-11/1) and transmitting said prepared invoice to the analysis controller for storage (‘430, column/line 10/65-11/1).

Group K

Initially the Examiner would like to point out that claim 7 also should have been rejected under 102(e). Koether explicitly teaches that service personnel receives via a hand-held terminal parts data in the form of **at least one** of inventory, inventory location and a parts catalog. For example, Koether recites service personnel ascertaining the availability of parts for a particular appliance (‘430, column 11, lines 10-14).

Groups L, M and N

Heagle et al. teach a method and system for monitoring security, safety, sanitation and personal hygiene (‘801, column 6, lines 52-56) in food service establishments (‘801, column 6, lines 37-45). Specifically, Heagle et al. teach monitoring

an employee's hygiene prior to said employee returning to a kitchen ('801, column 15, lines 55-65). Claims 12 and 20, however, were rejected over Koether in view of Heagle et al. and Mabuchi et al. and the Appellant only directed arguments to Koether and Heagle et al.. The Mabuchi et al. alarm system is an obvious modification of the Koether and Heagle et al. combination as it allows food establishment owners to enforce, for example, HACCP or even more stringent food safety guidelines ('801, column/line 12/24-13/20) by preventing untrained or "uncertified" (i.e. workers who have engaged in unsanitary activities) workers from accessing a kitchen (i.e. class of assets), which necessarily would prevent said worker from using specific appliances (i.e. asset) and thus potentially contaminating a food-handling environment ('760, figures 4, 22 and 23; column 21, lines 10-28 and 45-53; column 22, lines 34-52). Further, as Mabuchi et al. teach a subsystem ('760, figure 19) that includes an asset access mechanism for receiving a user identification from a data transmission point associated with the asset ('760, figure 19, items 34 and 35; column 21, lines 10-21) and compares the user identification from the transmission point to the user identification stored in a remote database to confirm the identity of the user, as well as determine user qualification for handling a task ('760, figure 22; column 21, lines 16-32). An obvious task in light of the prior art would be the handling of kitchen appliances (i.e. assets) ('430, abstract; '801, abstract; column 6; lines 38-63; column/line 12/24-13/20). The Appellant contends that Mabuchi et al. fail to teach a data transmission point associated with an asset (Appeal Brief, page 17, first full paragraph). This clearly not the case, as the Mabuchi et al.

narrative refers to a worker attempting to use specific equipment ('760, column 21, lines 21-27). Further, the claim language is broad as it merely refers a data transmission point *associated* with an asset. Hence, any data transmission point that is linked to an asset, such as by location, user, network, company or manufacturer, reads on the disputed limitation. This is also taught by Mabuchi et al., as Mabuchi et al. teach a system for controlling user access to sensitive work areas wherein these areas utilize various equipment (figures 19, 22-24, and 26; column 1, lines 5-27).

Group O

Appellant is of the opinion that the claim 19 is patentable over the combined teachings of Koether, Heagle et al., and Mabuchi et al. because the prior art fails to disclose, "user identification being compared with a corresponding user identification stored in said asset controller stored in said asset controller, and providing selective authorization based on additional user data stored in said asset controller". Mabuchi et al. teach reading an authorization subsystem ('760, figure 19, item 11) and asset controller ('760, figure 19, items 34 and 35; column 21, lines 10-22). Receiving user identification, transmitting the identification to an asset controller and providing selective access authorization based on additional user data stored in said asset controller for a particular user identification ('760, figures 22-24). Note, the claim does not recite access to the device, merely access authorization.

The Appellant in general questions the Examiner's combination of Koether, Heagle et al. and Mabuchi et al. based on a lack of reason to combine. Specifically, the Appellant believes that because Koether and Heagle et al. are directed towards food safety and Mabuchi et al. is directed to industrial safety the three are not combinable. The Examiner respectfully disagrees. The common thread through each reference is safety. Further, each looks to provide a safe working environment through the maintenance of high standards of worker and appliance performance ('430, column/line 8/57-9/2; '801, column 6, lines 38-62; '760, abstract, column 21, lines 45-53, column 22, lines 26-51).

(12) Conclusion

Appellant's arguments are not persuasive in that they fail to consider the clear teachings of Koether. For example, the Appellant does not recognize the multiple preventative maintenance techniques of Koether (i.e. scheduled, requested by an appliance and determined by diagnostic information transmitted to a control center-'430, column 8, lines 30-38; column 9, lines 60-63), instead choosing to focus only on one (i.e. scheduled maintenance). The Appellant's arguments are also not persuasive because the Appellant is not abreast of the state of the art regarding telecommunications and makes arguments that clearly ignore the roll that routers,

switches, base stations and the like play when transmitting data. Finally, the Appellant's fail to consider the breadth of the claims.

The Appellant asserts that general terms such as "data values", "maintenance history" and "asset controller" are what distinguish the Appellant's claims from the prior art. However, these terms are broad and subject to varying interpretations, and the Appellant has not provided a clear and concise definition that would enable one of ordinary skill to bestow a special meaning to the terms and hence the claim. It is the responsibility of the Examiner to give claims their broadest reasonable interpretation (*In re Pearson*, 181 USPQ 641 (CCPA 1974)) and although the claims are interpreted in light of the specification, limitations from the specification are **not** read into the claims (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)).

For the above reasons, it is believed that the rejections should be sustained.

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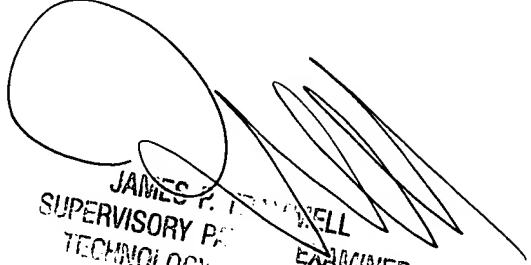
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